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Supreme Court of the United States

OCTOBER TERM, 1960.

No. 750

RAY VAUGHN,

Petitioner,

versus

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. .....

RAY VAUGHN,

Petitioner,

versus

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above entitled case on October 19, 1959, wherein judgment became final by overruling of Suggestion of Error on December 7, 1959.

CITATIONS TO OPINIONS BELOW.

The opinion of the Supreme Court is reported in 115 So. 2d, page 62. A certified copy thereof will be found set forth in extenso in the Appendix, as Appendix A.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28 of the United States Code, Chapter 81, Section 1257 (3).

The federal statute involved here is the Federal Safety Appliance Act, 45, United States Code Annotated Section 1, page 3, reading as follows: to-wit;

> ¶ 1. Driving-wheel Brakes and Appliances for Operating Train-Brake System.
>
> It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose. "March 2, 1893 c. 196 1, 27 Stat. 531." (AP-C.)

The judgment of the State Supreme Court was rendered on October 19, 1959, and a Suggestion of Error was timely filed, Suggestion of Error was overruled on December 7, 1959, a copy of Judgment and Order overruling Suggestion of Error is appended in extenso to this Petition as Appendix A and B.

The federal question sought to be reviewed was first raised at the close of Petitioners' testimony in the

Circuit Court of Lee County, Mississippi, at which time, Respondent moved for a directed verdict (R-170-171). In overruling the motion the Court said: (R-171-172).

> The Court: "I don't think it can be held to cease to be a train movement when a train picks up cars and shunts them off and releases them. It is certainly a part of the train operation to uncouple and place the cars that a local freight is required to make at different places. It is true that at that particular moment it might be said to be switching, but I believe the distinction there is that the movement of a train at any time it is required to act with its cars, and the fact at the time it had disconnected its cars on the main line and was in the act of placing cars somewhere else than on the main line, I don't think it would cease to be a train movement. The act does not apply, of course, to switching movements. In other words, employees engaged only in switching in the yards wouldn't have to have air brakes in moving from one point to another, but these cars have been in movement along the main line, and the act of undertaking to get rid of cars according to the employer's instruction, and so far as the train movement at the time when this occurred, certainly the act requires that there be sufficient air brakes on the cars if they are going to use air brakes, and if they were defective at the time they stopped there of course they had violated the Act by operating with defective brakes. Applying the Act, it is a reasonable construction that it would be a violation of the Act. Of course the wording of the statute does not say that every car has to be equipped with air-brakes, and of course if it is equipped, of course the law would not permit the use of a dangerous one.

That's my idea of it and for that reason I OVERRULE the motion."

Motion for a new trial on the grounds that the Court erred in not granting peremptory instruction at close of Petitioners' testimony (R-227) and other grounds was overruled. (R-230.)

The federal question was again raised on appeal to the Supreme Court and the question was then resolved in accordance with the contentions of Respondents and the judgment of the Circuit Court was reversed for the reasons set out in the opinion and judgment rendered in favor of Respondent. (See Appendix A.)

This cases arises under the Safety Appliance Act which is part of and is to be construed as *pari materia* with the Federal Employees' Liability Act; *Jacobson vs. New York, New Haven and Hartford Railway Company*, 206 F2d, 153, *San Antonio Railroad vs. Wagner*, 241 US 476, 36 S. Ct. 626, 60 L.Ed. 1110. The cases sustaining jurisdiction of this court on review of federal questions as involved here are; *Rogers vs. MOPRR*, 352 US 500, 77 S. Ct. 443, *Wilkerson vs. McCarthy*, 336 US 53, 69 S. Ct. 413, *Jacobson vs. City of N.Y.*, 315 US 752, 62 S. Ct. 854, *Coray vs. Southern Pacific Railroad Company*, 335 US 520, 69 S. Ct. 275.

That a federal question of substance is involved is clear. The Supreme Court of Mississippi has decided this case in a way probably not in accord with the applicable decisions of this court.

THE QUESTIONS PRESENTED.

The sole question presented here is the applicability of the Safety Appliance Act.

Was the Circuit Court of Lee County, Mississippi, warranted in holding that the Petitioner was entitled to the protection of the Safety Appliance Act as a matter of law when he was injured as a result of a defective or inefficient air train braking system on an interstate train?

The Circuit Court held that the Act applied because the train was proceeding on its interstate journey along the main line of the Frisco Railroad when the accident occurred and further that Respondent was not relieved of its duties under the Safety Appliance Act simply because the train stopped to switch out a cut of cars along its interstate route.

The State Supreme Court reversed the Circuit Court on the grounds that Petitioner was engaged in a switching operation at the time of his injury and not a train movement and therefore was not entitled to the protection or within the purview of the Safety Appliance Act.

It is this sole question that we now seek to have resolved by this Court.

STATEMENT OF CASE.

This cause of action was originally filed under the Federal Employers' Liability Act and the Safety Appliance Act. (R-2.) After motion by Respondent to require plaintiff to be more specific (R-7) an amended declaration was filed under the Safety Appliance Act alone by Petitioner, (R-25), whereafter issue was joined and the cause proceeded for trial on its me[redacted]he Circuit Court of Lee County, Mississippi on [redacted]ay 30th 1958.

The Petitioner was a brakeman on one of the Respondent's freight trains which was proceeding on its interstate journey on April 12, 1956, between Amory, Mississippi and Magnolia, Alabama, (R-40) a distance of approximately 153 miles. (R-60.) Upon reaching Columbus, Mississippi, a distance of approximately 40 miles from its point of origin the train was stopped for the purpose of cutting off and dropping a number of freight cars down the Respondent's main line track, past an interchange switch of the Columbus and Greenville Railroad. (R-43.) In the process of dropping these cars, Petitioner in the performance of his duties was required to ride them to set a hand brake. (R-48.) After the cars were cut free from the locomotive and while they were rolling freely down the mainline of the Frisco Railroad they were caused to come to a violent jerking stop, (R-49, 50) because of a defective or inefficient air brake on the third car in the cut, (R-91) suddenly going into emergency application thereby

causing Petitioner to be thrown from said cars and seriously injured. (R-56.)

Petitioner's contention was that his injuries resulted, in whole or in part, from a violation by the Respondent of the Federal Safety Appliance Act in that there was a defective or inefficient air brake on the third car in the cut and that such injuries as sustained by Petitioner flowed directly from the use by the Respondent in its train of a defective or inefficient air train braking system when it was proceeding in a "train movement" along Respondent's main line track in the course of its interstate journey.

After hearing all of the evidence and under proper instructions from the court, relative to the Safety Appliance Act the jury in the Circuit Court returned a verdict in favor of the Petitioner in the amount of $38,000.00 (R-225) and Respondent appealed to the State Supreme Court.

Upon review the Supreme Court of the State of Mississippi, reversed the case and held;

> "but we think it is necessary only for us to consider one of these grounds and that is that the air-brake provision found in the Federal Safety Appliance Act deals with running a train and does not deal with switching operations.
>
> We think that Appellant's position in this regard is well taken . . . consequently we are of the opinion that . . . . . the judgment of the lower court should be reversed and a judgment

here entered in favor of the Appellant." (See Appendix A.)

Suggestion of Error (See Appendix B) was timely filed in the Supreme Court and was overruled.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

It is essential that a Writ be granted in order to determine important questions as to the validity and application of the Safety Appliance Act and to assure that the thousands of Railroad workers in this country will be secure in the protection guaranteed them under the Safety Appliance Act which was enacted by Congress for their protection and to effect a greater uniformity of the interpretation and application of the Safety Appliance Act in all of the States.

The erroneous decision of the State Supreme Court would be of minor importance if it effected only the Petitioner. The far reaching effects of this decision however, if permitted to stand will do violence to the congressional intent of the Act to afford uniformity of protection to the large volume of Railroad workers, for whom the Act was sought to be enacted.

The Railroad Companies throughout this nation could rely on this opinion, which is in conflict with the federal judiciary authority on this question, to defeat the just claims of injured workers arising under like circumstances should it be permitted to stand.

Historically, the Appellant jurisdiction of this Court was conferred to guarantee the paramount authority and supremacy of federal law. Its major, if not sole purpose, was to effectuate the mandate that the acts of Congress and treaties should be the supreme law of the land.

No state court should be permitted to frustrate the operation of a federal statute or ignore the decisions of the United States Supreme Court and other federal courts construing it.

A valid conflict exists. The United States Supreme Court and other federal courts have in a long line of cases drawn a clear distinction between a "switching operation" and "train movement." *US vs. Panhandle & Santa Fe Ry. Co.*, C. A. Tex. 1953, 204 F2d, 241; *US vs. Southern Pacific Co.*, 100 F2d 984, Certiorari denied 59 S. Ct. 836, 307 US 633, *US vs. Southern Pacific Co.*, 60 F2d 864, Certiorari denied 53 S. Ct. 291, 287 US 667, *US vs. Northern Pacific Ry. Co.*, 54 F2d 573, *Illinois Central Railroad Company vs. US*, 14 F2d 747, Cert. dy. 47 S. Ct. 456, 273 US 752. *Great N.R. Co. vs. US*, 288 F. 190, *Chicago & N.W. Ry. Co. vs. US*, 168 F. 236, *US vs. St. Louis-San Francisco Ry. Co.*, 112 F. Supp. p. 646., *US vs. Panhandle and Santa Fe Ry. Co.*, 104 F. Supp. 758., *Kraemer vs. Chicago & N.W. Ry. Co.*, 181 N.W. 847, 148 Minn. 310. The State Supreme Court decision is in irreconcilable conflict with these cases.

In analyzing the foregoing authorities it seems abundantly clear that the operation engaged in by the Peti-

tioner at the time of the accident was definitely "a train movement" and not a "switching operation." In the instant case the train was proceeding on its interstate journey. It never left the main line until after the accident occurred and was therefore within the operation of the air brake provision of the Safety Appliance Act. We see no conflicts in the instant case and the case of *US vs. Erie Railroad Company*, 237 US 401, 54 L.Ed. 1019 which was relied as controlling authority for the opinion of the Mississippi Supreme Court. We are here dealing with an interstate train which is proceeding on its interstate journey. The mere fact that at the time of the accident it was in the process of "switching out" a cut of cars as an incidental part of its work during the course of its interstate journey did not remove it from the operation of the Safety Appliance Act.

This Court's careful consideration is invited to the case of *Coray vs. Southern Pacific Railroad Company*, 69 SCT 275, 335 US 5, 20.

In the *Coray* case, the decedent was riding a track motor car following an interstate train along the main line track. The train came to an emergency stop because of a defective air-brake on one car. The motor car which was following several hundred feet to the rear crashed into the train. In that case there was testimony to the effect that the decedent was looking back at a block signal when the train came to a stop. There was also evidence that if the decedent had been looking forward at the time that the train stopped he

could have stopped the motor car within 100 feet. Here we see that there certainly could have been an intervening cause, because of the negligence of the decedent in looking back and failing to keep a vigilant look out ahead. The Court, however, held that the Railroad Company was liable for decedent's death because his death flowed from the unlawful use by the Railroad of prohibited defective equipment.

The *Coray* case further held that the Safety Appliance Act had intended to protect all of those needing protection and that liability fastens as a result of the acts of violation from the unlawful use of prohibited defective equipment, "not from the position of the employee or the work which he may be doing at the moment when he is injured."

Numerous other cases could be cited but for sake of brevity we have only listed the foregoing.

The facts are utterly without dispute that:

a. The train was on an interstate journey.

b. That it had not completed its interstate journey.

c. That it was traveling on the Respondent's mainline track when the accident occurred.

d. That there was a defect or inefficiency in the air brakes on the car in question while it was being hauled in the train.

e. That the air brakes went into emergency application shortly after the car was disconnected from the train.

f. That Petitioner's injuries resulted from sudden stopping of the cars when brake on the third car went into emergency.

Can there be any doubt that Petitioner's injuries flowed directly from the hauling in Respondent's train a car with a defective or inefficient air train brake? The jury in the Circuit Court so found and rendered a verdict for Petitioner.

If the decision of the Mississippi Supreme Court is permitted to stand it will do violence to the spirit and purpose of the Federal Employees' Liability Act and Safety Appliance Act, thereby denying protection of a large group of workers for whose benefit it was enacted

PRAYER.

Wherefore, your Petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Mississippi, commanding said Court to certify and send to this Court a transcript of the record in the case entitled *"St. Louis-San Francisco Railway Company, Appellant, vs. Ray Vaughn, Appellee, No. 41, 236,"* including also the proceedings in said Supreme Court to the end that said cause may be reviewed and determined by this Court and the judgment of the Circuit Court of Lee County, Mississippi, be reinstated here.

Respectfully submitted,

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